



REPUBLIC OF KENYA

IN THE HIGH COURT OF KENYA

AT MERU

HIGH COURT CIVIL CASE NO. 134 OF 2003

CATHERINE KAWIRA.....PLAINTIFF

VERSUS

MURUNGI KIRIGIA.....DEFENDANT

RULING

This court by its ruling dated 30th April 2010 dismissed the defendant's application to set aside judgment entered in this case against him following an *ex parte* hearing. He was until the 6th May 2010 represented by the firm of Gikunda Anampiu & Co. Advocates. On 6th May 2010 when judgment had already been entered for the plaintiff, the firm of Charles Kariuki Advocates filed a notice of appointment of advocates. That notice is in the following terms:-

***“TAKE NOTICE THAT CHARLES KARIUKI & CO. ADVOCATE has been appointed by the defendant herein to act along with the firm GIKUNDA ANAMPIU & CO ADVOCATES.
.....”***

That notice was served upon the plaintiff's advocates J.G. Gitonga advocates and the defendant's advocate Gikunda Anampiu & Co. Advocates. Following the filing of that notice by Charles Kariuki & Co. Advocates, the defendant through that firm filed a Notice of Motion dated 16th June 2010. That application was argued before court on 16th March 2011. The ruling of that application was reserved for today. Order 9 of the Civil Procedure Rules 2010 has the title, “*Recognized Agents and Advocates.*” That order provides the appointment and appearances by parties in person or by agent and advocates. Rule 1 captures that definition that I have assigned to order 9 and part of it is as follows:-

“Any applicant to or appearance or act in any court required or authorized by the law to be made done by a party in such court may, expect where otherwise expressly provided by any law for the time being

in force, be made or done by the party in person, or by his recognized agent, or by an advocate duly appointed to act on his behalf.....” (Underlining mine)

Order 9 further proceeds to set out how a party if he was previously represented by an advocate may change that advocate to act in person or to have another advocate represent him. Before judgment is entered in a matter, a party is at liberty to change his advocate or to act in person without leave of the court so long as a notice of change of advocates is filed. After judgment, as is in this case, order 9 rule 9 (a) and (b) provides how such a change should be undertaken. That rule is in the following terms:-

“9. When there is a change of advocate, or when a party decides to act in person having previously engaged an advocate, after judgment has been passed, such change or intention to act in person shall not be effected without an order of the court –

a) upon an application with notice to all the parties; or

b) upon a consent filed between the outgoing advocate and the proposed incoming advocate or party intending to act in person as the case may be.”

In this case, the defendant appointed the firm of Charles Kariuki & Co. Advocates to act “*along*’ with the firm of Gikunda Anampiu & Co. Advocates. The purpose for which order 9 provides elaborate process of filing notice to either acting person or by advocate is to enable the other parties in the action to know who would be served with the court process. It is clear that the firm of Charles Kariuki & Co. Advocates and the firm of Gikunda Anampiu & Co. Advocates are two separate and distinct firms of advocates located in different locations in Meru Town. They do not share an office. In my view, the firm of Charles Kariuki & Co. Advocates filed the notice to act along with the firm of Gikunda Anampiu & Co. Advocates in order to circumvent the requirement to get the court’s authority to take over the conduct of this matter from the firm of Gikunda Anampiu & Co. Advocates on behalf of the defendant. Order 9 does not envisage a number of notices of appointment being filed by different firms of advocates. I have no doubt in my mind that a party is entitled to have as many advocates to appear for him and to act for him in a matter. It is however clear that under order 9 it is not envisaged that such a party who has many advocates acting for him would have each of those advocates file separate notices of appointment. If that were allowed one would realize that the other party would be put into a state of confusion on which particular firm of advocates would be served with the court process. The Notice of Appointment filed by the firm of Charles Kariuki & Co. Advocates dated 6th May 2010 was filed irregularly and without the authority of this court. It then follows that the Notice of Motion dated 16th June 2010 was filed by a firm of advocates not properly on record for the defendant. It fails on that ground. The Notice of Motion seeks stay of execution for the judgment entered in this matter. The plaintiff in her replying affidavit dated 24th June 2010 stated thus:-

“3. That the decree herein has already been executed and the land parcel in question transferred to the plaintiff and two other persons who are not parties to this suit (annexed hereto and marked as annexure C.K.1a b, c, are copies of the such certificates for land parcels number Igoji/Kiangua/2038 , Igoji/Kiangua/2037 and Igoji/Kiangua/2036.

4. that the intended appeal and the said application have been overtaken by events since the decree herein was already been (sic) executed.”

The certificates of official search are attached to the plaintiff’s replying affidavit and they show that parcel number 2038 is registered in the name of Samwel Murithi. Parcel number 2037 is registered in the name of Cleto Kithure. Parcel No. 2036 is registered in the name of the plaintiff. The stay, if granted, cannot reverse the registrations of those parcels of land. Also those persons who registered as owners of those parcels are not parties in this action. To that extent, the judgment having been executed it cannot be

stayed. The judgment of this court delivered on 9th July 2009 was to the effect that the above mentioned parcels, that is, numbers 2036, 2037 and 2038 were to be registered in the plaintiff's name. the defendant, it should be noted by his application dated 9th November 2009, sought amongst other prayers stay of execution of the *ex parte* judgment entered against him on 9th July 2009. By this court's ruling dated 30th April 2010, that application was dismissed. It follows that as a consequence of that dismissal, the stay of execution sought in the Notice of Motion dated 16th June 2010 under consideration in this ruling cannot be entertained. The Notice of Motion dated 16th June 2010 is *res judicata*. It therefore is the order of this court that the Notice of Motion dated 16th June 2010 is dismissed with costs being awarded to the plaintiff.

Dated, signed and delivered at Meru this 18th day of May 2011.

MARY KASANGO
JUDGE